

Enforcing the Shari`ah in Nigeria: Women, Justice, and the Muslims' Collective Conscience

*Ogechi Anyanwu*¹

Abstract

The reemergence of the Shari`ah in northern Nigeria in 2000 is reshaping the Muslims' criminal justice system in unintended ways. This article accounts for and provides fresh insights on how the fate of Muslim women under the Shari`ah intertwines with the uncertain future of the law in Nigeria. Using Emile Durkheim's theory of *conscience collective* as an explanatory framework of analysis, I argue that the well-placed objective of using the Shari`ah to reaffirm or create social solidarity among Muslim Nigerians has been undermined by the unequal, harsher punishments and suppression of human rights perpetrated against Muslim women since 2000. As I show, not only does such discrimination violate the principle of natural justice upheld by Islam, but it also threatens to shrink, if not wipe out, the collective conscience of Nigerian Muslims that the law originally sought to advance.

Introduction

In no African country is the Shari`ah's expansion and resurgence more contentious than in Nigeria. Since its reintroduction in 2000, the Shari`ah has posed a huge challenge not only to Nigeria's western-styled criminal justice system, but also to nation-building in the country's pluralistic society. Although numerous books and articles have been written on its emergence, none has approached it from a perspective that demonstrates how the ensuing discrimination against women under the Shari`ah threatens to weaken Muslims' social solidarity, which that very law seeks to promote. Against

Dr. Ogechi E. Anyanwu is an assistant professor of history at Eastern Kentucky University. His research interests and focus have been on education, religion, and law in Africa.

scholarly tendencies to focus on the surrounding cultural, religious, and political controversies, this article approaches the subject from an angle that incorporates Emile Durkheim's theory of *conscience collective* to underscore the threat that gender bias poses to the survival of the Muslims' collective conscience.²

Crime and punishment in all societies both challenge and promote social cohesion by reaffirming the people's loyalty to shared values, norms, and beliefs. As Durkheim stated: "What confers a criminal character on an act is not the nature of the act but the definition given it by society."³ Therefore, according to him, a society's established norms, values, and beliefs primarily shape the way it defines who is a criminal and thus unites members as a whole in opposition to the crime. By punishing the criminal, a society binds its members together in what he terms *conscience collective*.⁴

During the precolonial period in northern Nigeria, the Shari`ah regulated all aspects of Muslims' lives along shared Islamic beliefs, values, and norms and thus promoted social solidarity. Introduced in the area known today as northern Nigeria after Sokoto's famous 1804 Islamic revolution, the Shari`ah adjudicated criminal and civil cases, prescribing, among other things, such Old Testament styles of punishment as stoning for adultery and similar offences. Following colonial conquest – and in order to consolidate its socio-political control – Britain declared the existing criminal justice systems, including "tribal customary law" and the Shari`ah, unacceptable and replaced them with a western-style criminal code.

Dissatisfied with the new order, Muslims consequently mounted an unsuccessful campaign to revive all aspects of their justice system. Throughout the colonial period (1900-60), the British restricted the adjudication of Shari`ah courts to civil matters; after independence, successive pro-western governments upheld this tradition. In 2000, however, twelve states in northern Nigeria, constituting about 52 percent of the country's population, rejected this tradition and expanded the Shari`ah into governing the criminal aspects of their justice system.⁵

I have argued elsewhere that the Shari`ah's reemergence mostly represents a historic struggle by Nigeria's Muslims to revive their justice system along shared Islamic values and beliefs⁶ to both reaffirm and create the collective conscience that has held, and will continue to hold, them together.⁷ This paper places gender at the center of this seemingly endless controversy. By analyzing the arguably harsh and unfair sentences handed down by various Shari`ah courts since 2000, particularly those imposed on women convicted of adultery and premarital sex, as well as the ensuing reactions among Muslims, this study demonstrates how the Muslims' growing dissatisfaction

with the Shari`ah poses a formidable threat to the survival of their collective conscience, which the law was designed to reinforce or create.

Existing scholarship has concentrated on the dangers that the Shari`ah presents to nation-building in Nigeria's multi-ethnic and religious society, thereby often ignoring or underestimating how gender issues threaten its very survival. By placing gender concerns at the center, this paper brings fresh insights in understanding how discrimination against Muslim women since 2000 not only violates the principle of natural justice upheld by Islam, but also threatens to diminish, if not obliterate, the collective conscience of Nigerian Muslims. It is worth remembering that the Islamic punishment for adultery applies to both men and women.

The justice system of any given society reflects the prevailing beliefs and values shared by its members. Islamic and indigenous African religions played a central role in the justice systems of most precolonial African societies. They largely helped to unite these societies' members in a collective conscience until European colonial powers imposed a western-styled system. Although Nigeria's successive postcolonial governments upheld the freedom of religion, Muslims have always believed, as Muslim scholar I. A. B. Balgun has noted, that "any guarantee of religious freedom to a Muslim, will never have any degree of authenticity unless he [or she] is governed by the Shari`ah law."⁸ According to Durkheim, religious beliefs, especially in many simple and primitive societies, are critical elements in the people's collective conscience for "if religion has given birth to all that is essential in society, it is because the idea of society is the soul of religion."⁹ Punishment, often rooted in shared religious beliefs and values, helps societies maintain "social cohesion intact while maintaining all its vitality in the common conscience."¹⁰

One of the challenges in Nigeria, however, is that the Shari`ah must operate in a pluralistic society where the western-style jurisprudential system has dominated the country's criminal justice system since 1960. The Shari`ah's reemergence, which sought to reassert Muslim religious and sociocultural identities, represents a viable threat to nation-building in Nigeria, a fact that has been fully acknowledged and addressed by many scholars, human rights activists, constitutional experts, and political commentators. Yet the threat that violating women's rights poses to the survival of the Muslims' collective conscience has not been fully studied. By using Durkheim's theory as an explanatory framework for analyzing the Shari`ah, the problems posed by these violations to the creation and survival of the Muslims' collective conscience can be better understood.

The Historical Background

Islam and the Shari`ah have dominated Muslim West Africa's politics and criminal justice systems since the Islamic revolutions of the 1780s and 1800s. Seeking to stamp out syncretism, polytheism, and corruption among northern Nigeria's Hausa/Fulani peoples, the jihadists united Muslims under the Sokoto caliphate in a collective conscience by adopting the Shari`ah to adjudicate civil and criminal cases. By and large, the prevailing sense of Muslim identity originated during this period; ironically, British colonialism strengthened it by empowering the Muslim elite. The latter, who presided over the post-jihad caliphate, had a hard time legitimatizing their political authority, especially when the majority of the people resisted the pressure to abandon their old, indigenous religions. By restructuring the Shari`ah in line with western notions of justice and endorsing the Muslim elite's political and military power during the colonial period, the British, in essence, helped reinforce the Muslim leaders' political authority.

Eager to maintain peace in the newly conquered territory and conscious of the importance of retaining Sokoto's already centralized administrative structures and political institutions, Lord Lugard, High Commissioner of the Protectorate of Northern Nigeria, adopted the indirect rule policy of administration. Although the British restricted the Shari`ah's administration to civil matters, this policy of indirect rule nonetheless granted the Muslim ruling elite more powers than it had previously possessed. As a result, its members were placed in a position that allowed them to play a dominant role in the lives of Hausa/Fulani peoples during and after colonialism.¹¹

In a sense, this empowerment not only helped the elite consolidate its power, but also laid the foundation for the future clash of Islamic and Christian civilizations evident in the postcolonial debate on the Shari`ah. In the early years of Nigeria's independence, the moderate Muslim elite that had assumed political leadership suspended its quest to revive the Shari`ah in the interest of nation-building and against the aspirations of radical Islamic clerics. Any hope of its successful reemergence was ended by the military's domination during 1966-79 and 1983-99. But as Nigeria returned to democratic rule in 1999, the Muslims' political leaders in the north, who were eager to either win votes or maintain their popularity, expanded the Shari`ah to govern the region's criminal justice system.

The Shari`ah's Reemergence

Muslim governors in Nigeria's twelve northern states reintroduced the Shari`ah to replace the western criminal codes that had governed the coun-

try's justice system since independence. This event is largely a manifestation of the Muslims' desire to unite their collective conscience, express their dissatisfaction with the western-styled justice system,¹² demonstrate their anti-western sentiment, exercise their democratic rights, and embark on the "decolonization" of the prevailing justice system. Great euphoria among Muslims followed this proclamation in states' capital cities. As noted by Barnaby Phillips, a BBC reporter who visited Nigeria when the Shari'ah was launched in Zamfara: "There is no doubt that Shari'ah is a popular issue in the north; I did not meet any Muslim men in Zamfara who were not in favour of it."¹³ Women, unsurprisingly, were not central to this equation. On how Muslim women received this news, Philips added:

It is much harder for an outsider to gauge the opinions of women in an Islamic society, but it seems reasonable to assume that they are less enthusiastic about a system that will limit their current freedoms.¹⁴

It seemed that by restoring the totality of their precolonial justice system, the Muslim elite seeks to consolidate social cohesion based on shared Islamic principles. Muslims had a good justification: since independence, the country's western-derived justice system has been flawed and characterized by "systematic torture by the police, prolonged detention without trial, corruption in the judiciary, political interference in the course of justice, and impunity for those responsible for abuses."¹⁵ The Muslims hoped to remedy these shortcomings, promote a just society and, more importantly, revive their Islamic identity that had already been weakened by the twin forces of globalization and westernization by reinstating the Shari'ah.

The Shari'ah is based on four main sources: the Qur'an, the hadith, *qiyas* (analogy), and *ijma`* (consensus of the Islamic scholars). Islamic religious officials and scholars interpret the Qur'an and the hadith differently. In Nigeria, where Sunni Muslims constitute the majority of the population, the four main Sunni legal schools are present. The Maliki school, which is more flexible than the others, predominates.¹⁶ Of the three categories of offences and punishments under the Maliki school, the *hudud* are relevant to this study. Perceived as divine and rigid (because they are believed to be authorized by God), *hudud* offences include extra-marital sex (punishable by death or flogging) and rape (punishable by death, if married).¹⁷

These two offenses have been at the center of the gender bias that threatens Muslim unity, although the *hudud* punishments were supposed to be gender-neutral. Zamfara state's Shari'ah Penal Code Law of 2000, later adopted by other Shari'ah-ruled states, clearly defines extra-marital sex and rape: extra-marital sex is committed when "a man or a woman fully respon-

sible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act.”¹⁸ Rape is defined as a man having sexual intercourse with a woman principally against her will, without her consent, or when her consent has been obtained by threat.¹⁹ While the law’s stipulation with regard to both offenses is clear, its application reveals a glaring bias against women.

Prejudice against Women

Since 2000, states implementing the Shari`ah have created more than one hundred Shari`ah courts each, and these courts have handled more than ten thousand criminal cases in a manner that shocks the sensibilities not only of non-Muslim observers, but also of Muslims.²⁰ Discrimination against Muslim women predates this latest application of the Shari`ah. In fact, under the British, Sir Bernard Bourdillon, Governor of Nigeria, (1935-43), noted after a tour of the northern region that “the Moslem gentleman is still in many places compelled by custom and religious prejudice to seclude his own women-folk.”²¹ Introducing the Shari`ah only exacerbated this practice, which had continued during the postcolonial period, “by providing a new, official framework for it.”²² According to Husseini Abdu, an academic and activist in Kaduna, “although it is difficult separating the Hausa and Islam[ic] patriarchal structure, the reintroduction or politicization of Shari`ah in Northern Nigeria has contributed in reinforcing traditional, religious and cultural prejudices against women.”²³

Discrimination against women manifests itself in various ways. By banning female judges from serving in Shari`ah courts, permitting unequal testimonies, allowing unequal standards of evidence, ignoring a “sleeping embryo,” and failing to investigate rape cases, the Shari`ah, as applied in Nigeria, has systematically denied women access to justice.²⁴ It also rates a woman’s testimony during any trial as half that of a man, thereby underlining their inferior place in Muslim culture and revealing why they are on the losing end of this system of justice. Under the Shari`ah, while pregnancy is considered adequate evidence to convict an unmarried woman of *zina`* (adultery), the eyewitness accounts of four individuals is required for a man to be convicted. Evidently, this standard of proof is easy to establish for women accused of *zina`*; however, it is unfeasible to obtain for men.

This obviously unequal treatment means that accused men are easily acquitted (unless they confess, which is atypical), while women are simply convicted. Many of the women accused of *hudud* offenses have claimed to be rape victims, and yet judges often fail to investigate such claims. More

often, such women are punished for bringing false accusations, for it is difficult to prove such allegations under the law's provision. In addition, by ignoring the Maliki school's provision of a "sleeping embryo," which favors innocent women indicted for *zina'*, the Shari`ah, as applied in northern Nigeria, continues to convict them and invite public outrage. Worse still, as the Maliki school bars women from becoming judges, the majority of Shari`ah court lawyers are men; the few female lawyers who represent accused women cannot speak in court because a female defense lawyer can speak only through her team's male counsels.²⁵

The Shari`ah's implementation in a patriarchal society has made injustice against women unavoidable yet inexcusable. Pregnancy alone is enough to convict an unmarried woman, while a man's oath of denial is often considered sufficient for acquittal unless four independent and reputable witnesses testify to having seen him take part in the act.²⁶ Still, in many instances, either the female defendants are not given the right to appeal (especially, and as in most cases, when such pregnancies are the result of rape) or the sentences were carried out immediately after the verdict, even before an appeal could be made and heard.²⁷ This unequal gender-based treatment clearly violates the Qur'an's principles, the main source of Shari`ah, for the Qur'an does not contain the concept of an intentional policy of bias against women. As the 2001 report of the U.S. Department of State states, the Shari`ah "violates the equality of women before the law since, in at least some of the Shari`ah courts, the testimony of a woman is given only half the weight of a man's. Men are usually not punished for alleged sexual crimes, whereas women have suffered corporal punishment and death sentences."²⁸

Cases of gender-based injustice dominate the news in Nigeria; however, those of Safiya Hussein and Amina Lawal, two Muslim women condemned to death for adultery, attracted more attention than others. Yakubu Abubakar, the man accused of having sex with Safiya Hussein, denied the offense and was acquitted by a Shari`ah court in Sokoto state. Hussein, who became pregnant as a result, was convicted since pregnancy constitutes grounds for conviction. The court refused the call for a DNA test to determine the child's paternity. Refusing this option, despite the wishes of many Muslims and especially women, who stand to benefit, underlines the Shari`ah courts' negative attitudes toward women and thus threatens social unity among all Muslims, a goal that the Shari`ah itself seeks to promote.²⁹

The case of Amina Lawal in Katsina was similar. Yahaya Abubakar, who was accused of having sex with Lawal, denied it; Lawal was sentenced to death based on her pregnancy and confession.³⁰ In both cases the sentences were revoked on appeal. Although Muslims were relieved that the

sentences were reversed, their concerns over the court's misjudgments still haunt them. Besides, few such cases attract widespread publicity and all too often the sentences, such as flogging, are carried out before appeals can be made and heard. In addition, not every Muslim woman has the resources and knowledge to appeal her sentence.

Although these two cases outraged many Nigerians and others (including Muslims) around the world, countless cases affecting women often receive far less media attention. In 2001, Zamfara's Shari`ah court sentenced Bariya Magazu, a pregnant sixteen-year-old girl, to 180 lashes for having premarital sex despite her testimony that three men had raped her. Dissatisfied with the verdict and able to get the help of BAOBAB for Women's Human Rights, a nongovernmental group, she appealed the verdict. The government, however, "immediately carried out the sentence, ignoring a promised appeal process. The local authorities said they wanted to end the controversy."³¹

In 2002, a Shari`ah court in Katsina state sentenced Amina Lawal Kurami to death for bearing a child outside wedlock; the man she identified as the child's father denied the accusation and was acquitted for lack of evidence.³² On 29 December 2003, a Shari`ah court in Alkalere, Bauchi state, sentenced Umar Tori to death for having sex with his fifteen-year-old stepdaughter.³³ Despite her claim that she had been raped, she was sentenced to one hundred lashes for having engaged in premarital sex even though medical evidence could have determined the truth. These sentences, and more, were handed down without any legal representation during the trial.

Since the Shari`ah's implementation, there has been intense debate between the fundamentalists and liberal schools of thought. While fundamentalists favor the literal application of *hudud* offenses (e.g., stoning the adulterer to death), liberals believe in multiple interpretations to reflect changing societal needs. The major challenge facing Shari`ah law is, as Radwan Masmoudi (president, Center for the Study of Islam and Democracy) noted, "how to reapply the principles of Shari`ah in social, economic, and political contexts that are markedly different from those that existed during its original development."³⁴ Opposition from women's groups and their male sympathizers could potentially delegitimize the Shari`ah if its various sources are not "interpreted in a manner supportive of equality for women" and if the north's patriarchal systems are likewise not changed to reflect Islamic values and beliefs.³⁵ The heated debate within Muslim societies about the Shari`ah's mistreatment of women challenges its very role in reaffirming the Muslims' diminishing consciousness and may potentially help reshape the justice system so that it will conform to the principles of equality and natural justice that are the hallmarks of modern societies.

Weakening the Muslim's Collective Conscience

This prevalent injustice is evident in the many Shari`ah court judgments that were later overturned on appeal, most of which favored women wrongly sentenced to death for adultery while their male counterparts escaped punishment. Nevertheless, the Shari`ah's harsh and selective punishments raise important questions about its viability and sustainability in the twenty-first century and the increasingly globalized world. Such wrong, hasty judgments show that "either the rule or judgment is not a correct statement of the law, or its real implications have not been properly grasped."³⁶

Shortly after assuming office and eager to consolidate power, governors in predominantly Muslim states swiftly implemented the Shari`ah without seeking to address the historic handicaps faced by Muslim women. As a result, not only have they wasted their political capital – an excellent opportunity of using the law to promote sustainable social harmony among Muslims – they have also helped fuel formidable anti-Shari`ah campaigns that threaten its very viability. Given Muslim women's high rate of poverty and lack of education, as well as their inadequate access to legal aid, the inadequate observance of procedures, and the inadequate training of Shari`ah judges, it is not surprising that charges of injustice have overshadowed its implementation. Human rights organizations, which direct their anti-Shari`ah campaigns largely against the unjust convictions of Muslim women, have grown with great intensity since 2000³⁷ and have become vocal advocates for the rights of women and the poor. They have been very effective in uniting the collective conscience of Nigerians against the Shari`ah.

The growing public support enjoyed by these organizations testifies to the Shari`ah's poor standing in Nigeria. These organizations, which receive unrelenting support from Amnesty International and the Human and Civil Rights Organization of America, have attracted support from both disappointed Muslim women and vocal male activists, thereby highlighting the growing rejection of the Shari`ah even among Muslims. The mounting outcry and oppositional consciousness against Shari`ah-based injustice, especially among Muslims, represents the greatest threat to its survival. But most importantly, it is undermining the Shari`ah's attempt to revive the Muslims' precolonial justice system, reaffirm and recreate their precolonial collective conscience, resist westernization and globalization, and decolonize the British colonial justice system.³⁸

It is true that the Shari`ah forbids female judges from presiding over any Shari`ah court, although the Qur'an emphasizes gender equality. This legislative procedure is a remarkable departure from the teachings of Islam. The Qur'an declares that men and women share the same human nature and there-

fore vests both of them with the same inherent dignity and as joint trustees of God on Earth.³⁹ Not allowing women to serve as judges raises serious questions about the legal system's ability to uphold the gender equality professed by Islam and weakens the main argument advanced its proponents against maintaining the prevailing western-style criminal justice system.

For instance, in his demand for the creation of a Federal Shari`ah Court of Appeal (FSCA) that would be run by Muslim jurists during the 1978 constitutional conference, L. Adegbite, a prominent Shari`ah law advocate, argued that to ask non-Muslims to administer the Shari`ah would be like "asking a committed capitalist to interpret socialist legality."⁴⁰ This sentiment, shared by many Muslim leaders, scholars, students, and others, largely helped forge a coalition between the government and the people that made the successful launching of Shari`ah law in 2000 possible. While this sentiment is understandable, Adegbite's logic, when applied to the tradition of refusing the right of qualified women to serve as female judges, exposes a double standard that severely shatters the Shari`ah's legitimacy in the eyes of both non-Muslims and Muslims.

The clash of Christian and Islamic civilizations in Nigeria, more pronounced since the Shari`ah's introduction, has continued to becloud the debate surrounding the treatment of Muslim women. Engaging Shari`ah critics, Nafiu Baba Ahmed (secretary general, the Supreme Council for Shari`ah in Nigeria), has stated:

There is no universal value system. There are problems and misunderstandings because people are looking at it from a Western secular viewpoint ... The introduction of Shari`ah shows the yearning of the people. They are not happy with having a foreign system imposed on them.⁴¹

Likewise, an Islamic scholar in Kano has argued: "We have our own value system and religion. Just because the West doesn't agree, it doesn't mean it's wrong."⁴²

It is ironic that while many Shari`ah proponents resist the West's real and perceived domination, they dismiss legitimate calls to promote gender equality that even the Islamic religion and law eloquently endorse. While the fears of these Islamic scholars are understandable, these very scholars continue to ignore violations of Islamic principles endorsed by the Shari`ah.

Access to justice under the Shari`ah has been highly tainted by allegations and accounts of how the system has tolerated human rights abuses, which is similar to the imperfect western justice system it seeks to replace. The Shari`ah's legitimacy, as Human Rights Watch has observed, has been compromised by the

defendants' lack of access to legal representation; the failure of judges to inform defendants of their rights and grant them these rights; the courts' acceptance of statements extracted under torture; and the inadequate training of Shari`ah court judges which has resulted in ... abuses.⁴³

Women, who constitute the majority of the north's uneducated and poor, are mostly affected. Their plight is worsened, naturally, by the patriarchal nature of the society. The number of wrongful convictions against them both testify to that and reveal some fundamental problems with the Shari`ah's implementation, for if the judges had

followed due process and [if] had defendants [had] had full legal representation, many of these death sentences and amputation sentences would never have been passed, especially in view of the safeguards which exist within [the] Shari`ah against harsh and unfair sentencing.⁴⁴

As in the United States, Nigeria's Legal Aid Council (created in 1976) requires the federal government to provide free legal services to defendants who cannot afford it.⁴⁵ The council has an office in each state; however, due to limited funding it cannot take on many clients. As a result, many poor victims of the Shari`ah courts are denied justice due to inadequate representation. In 2003, only one Legal Aid Council lawyer served in each state; worse still, no lawyer represented any of the defendants tried or convicted by the Shari`ah courts.⁴⁶ The Legal Aid Council was right when it admitted:

Despite the existence of the Legal Aid Council a huge population of the poor, especially the rural poor, are still completely alienated for the legal system. Legal services are generally expensive and intimidating. Also most lawyers are concentrated in urban areas. This means that rural communities seldom have the services of lawyers or legal advice offices.⁴⁷

One of the many factors that make injustice largely unavoidable is the notion that the Shari`ah and the verdicts of its courts are sacred and therefore should not be challenged. Nafiu Baba Ahmed highlighted this point: "The right to legal representation is unacceptable to me. Lawyers will just subvert the Islamic principles of justice. They are not informed by the fear of God."⁴⁸ What, one may ask, is the essence of a justice system when even defense lawyers cannot test the merits of the state's arguments? A lawyer in Zamfara who narrated his experience to Human Rights Watch stated that on many occasions Shari`ah court judges have prevented lawyers from appearing in court, telling them that their presence was "foreign" to the Shari`ah.⁴⁹

The Muslim elite has not actively opposed some of these abnormalities because, as one prominent Kaduna-based politician told the BBC, "to do so

would be to leave yourself open to the accusation that you are un-Islamic.”⁵⁰ In an open, democratic system, every aspect of the society should be subject to criticism and review with the aim of achieving a more perfect society. This is not the case with the Shari`ah, as it silences many opposing voices.

Silencing dissent only confirms the critics’ charge of insincerity on the part of state governors as well as the ongoing and prevalent injustice in administering the Shari`ah. Undeterred, though, vocal critics are emerging among those Muslims living in Shari`ah-ruled states. One notable Muslim activist and poet, Shehu Sani, has championed the course of challenging the justice system through his writings. His attempt to raise public awareness about Shari`ah court injustices in his satirical play, *The Phantom Crescent*, so angered the Muslim establishment that in October 2007, even before he could stage a public dramatization of his play, an Upper Shari`ah Court in Tudun Wada, Kaduna, banned its sale, staging, or any form of distribution.⁵¹ The state’s intimidating and desperate posture demonstrates that the Shari`ah has not been effective in uniting Muslims in a collective conscience.

The Phantom Crescent is a work of fiction that captures the circumstances surrounding the Shari`ah’s implementation in an unnamed state and the ensuing social unrest. Some of its scenes portray Ahmed Sani, Zamfara’s governor and the first to introduce the law into his state, selectively approving amputation and stoning to death while sparing other highly placed government officials.⁵² As Sani wrote in the play: “Under Shari`ah law everyone is a sinner, with the exception of members of the ruling party, tokenistic clerics, businessmen and feudal lords co-opted to the government side.”⁵³ Evoking the Shari`ah’s class concerns, he correctly stated: “It is the poor who commit adultery in hotels ... The rich have access and can move to do those things in other parts of the country, where there is no Shari`ah Law.”⁵⁴

Although the government banned its staging, the play caused enough tension for the Kaduna Indigenes Forum (KIF), an influential non-NGO comprised of technocrats, academicians, and politicians from Kaduna State, to publicly express its fear of an imminent ethno-religious crisis that could destabilize the state.⁵⁵ By making such concerns public, this powerful organization highlighted the public’s dissatisfaction with a justice system that was rapidly losing the moral support of the masses.

While Sani claimed during the five-year anniversary celebration of the Shari`ah’s implementation that crime had been reduced in Zamfara, he forgot to mention that sexual, physiological, and physical abuses against women are hardly reported due to fear of a possible backlash.⁵⁶ He argued that the Shari`ah sought to meet “the minimum expectations of our people and above all, our creator, Allah,” but seemed to ignore the injustice meted out to poor

women while rich, influential government officials who commit similar crimes go free.⁵⁷ Although public dissatisfaction with Nigeria's "faltering justice system fueled the adoption of Islamic law in northern Nigeria, the legal deck remains stacked against the region's poor and uneducated."⁵⁸ Huseini Danwanzam, the blind father of Safiya Huseini, convicted of *zina*, said helplessly: "Nobody is happy about this. There is no justice."⁵⁹ The growing frustrations, along with the steady erosion of economic and social opportunities, especially among women, could potentially endanger the Shari`ah's survival and social cohesion among Muslims in Nigeria. As Sanusi L. Sanusi, a Nigerian banker and Islamic scholar, noted: "As long as you don't address the problems of the people, people will lose faith in the system."⁶⁰

The plight of Muslim women since 2000 and their growing opposition to the unjust system crystallized in January 2009, when they planned a public demonstration in Kano to convey their many frustrations. Saidu Dukawa, director general of the *hisbah* (Shari`ah police), banned the protest and dismissed it as an "embarrassment" and "un-Islamic."⁶¹ He added: "Never in the history of Islam have women taken to the street to press for their demands."⁶² Although Muslim women have publicly decried injustice many times in modern era, protesting their discrimination under the Shari`ah underscores the continued erosion of Muslims' collective conscience. This further highlights the unfavorable condition under which women live in the North, conditions that alienate them from the rest of the society. As Durkheim puts it:

The characteristic of moral rules is that they enunciate the fundamental conditions of social solidarity. Law and morality are the totality of ties which bind each of us to society, which make a unitary, coherent aggregate of the mass of individuals.⁶³

While Muslims have the constitutional right to uphold the Shari`ah, notwithstanding the calls for its abolition by proponents of the western system, it could still be enforced to reflect the spirit of equality, fairness, and justice that Islam itself upholds. More importantly, the law could be, as David Smock affirmed, "made compatible with universal human rights, pluralism, and democracy while remaining genuinely Islamic."⁶⁴

Conclusion

The people's collective conscience is the core of a given society's survival. Muslims in Nigeria introduced the Shari`ah in 2000 to strengthen their collective conscience, which had been suppressed since the colonial period. Yet the mistreatment of women, which is tolerated by the establishment, betrays

the noble goal that the law set out to accomplish and thereby threatens to undermine the Muslims' social solidarity. Above all, it offends the Muslim's collective sentiments and, as Durkheim stresses, no offense against collective sentiments can be "tolerated without the disintegration of society."⁶⁵ Since criminal laws "give an insight into what a society and its rulers regard as its core value," the sort of justice produced is a good indication of the strength of a society's collective conscience.⁶⁶

Muslims in Nigeria, no doubt, have the constitutional right to adopt a legal system that reflects their beliefs and values. Justice, however, is at the center of its survival, for it is crucial in legitimizing the state's political authority. The prevalent poverty and lack of education among Muslim women, coupled with inadequate access to legal help, procedures, and training of Shari`ah court judges, have helped entrench injustice against women since 2000. As this paper has demonstrated, by violating the principle of equality and non-discrimination in the treatment of women, the Shari`ah has become not only a vehicle for abusing women, but has also energized both opponents and victims of the system to unite against it. In addition, the selective punishment of Muslim women, evident in numerous sentences handed down by Shari`ah courts, runs contrary to the principles of the Islamic religion and law. Even more importantly, this continued tolerance weakens, if not actually destroys, the collective conscience that the Shari`ah originally sought to foster.

Endnotes

1. I would like to give special thanks to Eastern Kentucky University's College of Arts and Sciences for providing the funds for this research. I am also grateful to Dr. Raphael Njoku and the anonymous readers of *The American Journal of Islamic Social Sciences* for their valuable comments and suggestions.
2. Ibrahim Ado-Kurawa, *Shariah and the Press in Nigeria: Islam versus Western Christian Civilization* (Kano: Kurawa Holdings Ltd. 2001); B. A. T. Balewa, *Common Law and Sharia in Nigeria: An Unresolved Problem of Coexistence* (Enugu: Fourth Dimension, 2002); Johannes Harnischfeger, "Sharia and Control over Territory: Conflicts between 'Settlers' and 'Indigenes,'" *African Affairs* 431 (July 2004); Tijjani Muhammad Naniya, "History of the Sharia in Some States of Northern Nigeria to Circa 2000," *Islamic Studies* 14 (Jan. 2002); Ruud Peters, *Islamic Criminal Law in Nigeria* (Lagos: Spectrum Books, 2003); and A. A. Oba, "Islamic Law as Customary Law: The Changing Perspective in Nigeria," *International Comparative Law Quarterly* 51, no. 4 (Oct. 2002).
3. Emile Durkheim, *The Division of Labor in Society*, trans., W. D. Halls (New York: The Free Press, 1984), 40.
4. Ibid.

5. Zamfara State led the way in January 2000, and other states quickly followed. In 2000 the following states introduced Shari'ah law: Sokoto and Niger (May); Kano (June); Katsina, Jigawa, and Borno (Aug.); Yobe (Oct.); and Kebbi (Dec.). They were followed in 2001 by Bauchi (Feb.), Kaduna (Nov.), and Gombe (Dec.).
6. See Ogechi Anyanwu, "Crime and Justice in Post-colonial Nigeria: The Justifications and Challenges of Islamic Law of Sharia," *Journal of Law and Religion* 21, no. 2 (2005-06):101-35.
7. Ibid.
8. See *The New Nigerian*, 8 May 1977.
9. Emile Durkheim, *On Morality and Society, Selected Writings 191*, ed. Robert N. Bellah (Chicago: University of Chicago Press, 1973), 191.
10. Ibid., 108.
11. For more information, see Murray Last, *The Sokoto Caliphate* (London: Humanities Press, 1967).
12. Ogechi Anyanwu, "Crime and Justice in Post-colonial Nigeria."
13. Barnaby Phillips, "Laying Down the Islamic Law," BBC Focus on Africa, January-March 2000, 19.
14. Ibid.
15. Human Rights Watch, "Political Sharia"? *Human Rights and Islamic Law in Northern Nigeria* 16, no. 9A (Sept. 2004): 3. More and more Nigerians lost faith in the criminal justice system, and it is not surprising that such extra-judicial institutions as the Baskasi and the Oodua Peoples Congress came to dominate punishment in Nigeria for many years. For more information, see David Pratten, "The Politics of Vigilance in Southeastern Nigerian," *Development and Change* 37, no. 4 (2006): 707-34.
16. Sanusi Lambido Sanusi, "Politics and Sharia in Northern Nigeria," in *Islam and Muslim Politics in Africa*, ed. Benjamin F. Soares and Rene Otayek (New York: Palgrave Macmillan, 2007).
17. Others crimes include theft (punishable by amputation), armed robbery (punishable by death or amputation), false accusation of extra-marital sex (punishable by flogging), drinking alcohol (punishable by flogging), and apostasy or renunciation of Islam (punishable by death). See Zamfara State of Nigeria, Shariah Penal Code Law, Jan. 2000, chap. 8. See also Human Rights Watch, 11.
18. Ibid.
19. Ibid.
20. See Mathew Kukah, "Human Rights in Nigeria: Hopes and Hindrances," *Missio* 14 (2003): 26.
21. National Archive Enugu, File No. EP 13703, MINLOC 6/1/327, Memorandum by Sir Bernard Bourdillon, "Social Relations with Moslem Chiefs and their Women-folk," 23 Oct. 1936.
22. Human Rights Watch, 63.
23. Husseini Abdu, "Power in the Name of Allah? Muslim Women in Contemporary Nigerian Politics" (paper presented at a national workshop on Gender,

- Politics and Power, organized by the Centre for Social Science Research and Development, Lagos, 29-30 Jul. 2003).
24. For more information, see Human Rights Watch.
 25. Ibid.
 26. See National Organization for Women, "Fact Sheet: Women's Rights Under Sharia in Northern Nigeria," 22 Aug. 2002, www.now.org/issues/global/082202sharia.html (accessed 10 Jan. 2009).
 27. Stephan Faris, "Final Decision Expected in Nigerian Stoning Case," Women's eNews, 18 Mar. 2002, <http://www.womensenews.org/article.cfm/dyn/aid/849/context/archive> (accessed 10 Feb. 2009).
 28. US Department of State, International Religious Freedom Report, "Nigeria," Oct. 2001. Governor Sani told visiting NGOs that two women were equivalent to one man as witnesses in Shari'ah courts. The Civil Liberties Organization says that this "was let out while trying to explain the apparent discrimination against women in the state." See *Sharia and the future of Nigeria: Report on a Trip by the Civil Liberties Organization, CLO, Hurilaws and other NGO's to Zamfara State*, 11-13 Feb. 2000."
 29. See "Safiya's parents plead for their daughter," *The Guardian*, 16 Dec. 2001.
 30. See *The Punch*, 26 Mar. 2002.
 31. Stephan Faris, "Final Decision Expected in Nigerian Stoning Case."
 32. National Organization for Women.
 33. Amnesty International USA, Annual Report for Nigeria, 2006, www.amnesty-usa.org/annualreport/view.php?c=NGA (accessed 3 Dec. 2008).
 34. Cited in David Smock, "Applying Islamic Principles in the Twenty-first Century Nigeria, Iran, and Indonesia," United States Institute of Peace, Special Report 150, September 2005, www.usip.org/pubs/specialreports/sr150.html (accessed 20 Jun. 2008).
 35. See Asma M. A. Halim, "Challenges to the Application of International Women's Human Rights in the Sudan," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), 409.
 36. Muhammed Tabiu, "Towards a Strategy for Protection of Women's Rights under Sharia in Nigeria," (keynote address delivered at the two-day conference on Women's Rights and Access to Justice under the Sharia in Northern Nigeria Organized by WACOL, Abuja, 25-28 Feb. 2003).
 37. Some of these human rights organizations are: Women Advocates Research and Documentation Centre, Women Consortium of Nigeria (WOCON); Women Network for Access for Justice, Women's Right Watch Nigeria; Women Aids Collective (WACOL); Justice, Development, and Peace Commission (JDPC); and Legal Defence and Assistance Project (LEDAP).
 38. For detailed information on the growing dissatisfaction with the Shari'ah's implementation, see Joy Ngozi Ezeilo, Muhammed Tawfiq Ladan, and Abiola Afolabi-Akiyod, eds., *Sharia Implementation in Nigeria: Issues & Challenges*

- on Women's Rights and Access to Justice* (Enugu, Port Harcourt, Abuja: Women's Aid Collective, 2003).
39. Qur'an 4:1, 7:189, 42:111, 17:70, and 2:30.
 40. L. Adegbite, "The Role of Muslim Leaders in the Government of Nigeria" (paper presented at the Religious Studies Conference, Ibadan 1978).
 41. See Human Rights Watch, 103.
 42. Ibid.
 43. Ibid., 2.
 44. Ibid.
 45. See The Legal Aid Decree no. 56 of 1976, amended in 1990 and 1994.
 46. See Human Rights Watch, 68-69.
 47. Legal Aid Council of Nigeria, <http://legalaidcouncilofnigeria.org/pages/services.html> (accessed 20 Jan. 2009).
 48. See Human Rights Watch, 69.
 49. Ibid.
 50. Phillips, "Laying Down the Islamic Law."
 51. See Elizabeth Dickinson, "Nigeria: Sharia Court Bans Satirical Play," allAfrica.com, 28 Oct. 2007, <http://allafrica.com/stories/200710280013.html> (accessed 2 Jun. 2008).
 52. Ibid.
 53. Ibid.
 54. Ibid.
 55. Ibid.
 56. Ahmad Sani, "Five Year Anniversary Celebrations on Sharia Introduction in Zamfara State," speech delivered in Ali Akilu Square, Zamfara State, 19 Feb. 2005.
 57. Ibid.
 58. Stephan Faris, "Religion and Justice in Nigeria," *Mother Jones*, 18 Mar. 2002, www.motherjones.com/politics/2002/03/religion-and-justice-nigeria (accessed 10 Feb. 2009).
 59. Ibid.
 60. Ibid.
 61. BBC, "Sharia police block women's rally," 19 Jan. 2009, <http://news.bbc.co.uk/2/hi/africa/7837512.stm> (accessed 19 Feb. 2009).
 62. Ibid.
 63. Durkheim, *The Division of Labor in Society*, 398.
 64. Smock, "Applying Islamic Principles."
 65. Durkheim, *On Morality and Society*, 63.
 66. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 1.